

November 18, 2013

Ms. Lisa Lund, Director, Office of Compliance  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Ariel Rios Building, *Mail Code: 2221A*  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Ms. Lund:

I am writing on behalf of the Northeast States for Coordinated Air Use Management (NESCAUM) to express concerns our member agencies have regarding proposed changes to the Compliance Monitoring Strategy (CMS). The intent of the CMS is to provide a stable guidance mechanism for EPA to assist states in directing resources and targeting facilities for compliance efforts. EPA clearly states that this is a policy and does not impose legally binding requirements. However, the proposed changes appear to force states to abide by mandated requirements due to the inclusion of State Review Framework (SRF) language and Federally Reportable Violation (FRV) tracking. NESCAUM's issues associated with these policies have been fully detailed in letters previously submitted to EPA. Until these issues have been resolved, inclusion of the policies into the CMS is inappropriate and should be removed. Additionally, the NESCAUM states request that EPA revise the language within the document to precisely articulate expectations. The current language is vague and creates the opportunity for misinterpretation of the revised EPA policy.

The NESCAUM states are ready and willing to support appropriate revisions to CMS. However, the current language and the limited time allotted for review make it impossible to support these proposed changes. We urge EPA to work with state media program staff to develop a revised CMS policy that both states and EPA can enthusiastically support. If you have any questions regarding our comments please contact Lisa Rector of NESCAUM at 802-899-5306.

Sincerely,



Arthur N. Marin, Executive Director  
NESCAUM

Attachment: NESCAUM letter to EPA dated May 2, 2012  
NESCAUM letter to EPA dated May 8, 2012

Cc: Steven Rapp, EPA Region 1  
Karl Mangels, EPA Region 2  
Edward Messina, EPA OECA  
Julius Banks, EPA OECA  
Robert Lischinsky, EPA OECA  
NESCAUM Board of Directors  
NESCAUM Enforcement and Compliance Committee

## MEMORANDUM

**TO:** Lisa Lund, U.S. EPA OECA

**THRU:** Lisa Rector, NESCAUM

**FROM:** NESCAUM's Enforcement Committee

**RE:** Concerns with EPA's Federally Reportable Violations Approach

**DATE:** May 2, 2012

### Background

The U.S. Environmental Protection Agency (EPA) has indicated that it will require state and local air pollution control agencies to report all Federally Reportable Violations (FRV) identified by enforcement agencies into the national Air Facility System (AFS). EPA's reasoning behind this effort is its goal of increasing transparency of the activities of state enforcement programs. The NESCAUM states do not believe the FRV reporting effort, as currently structured, will achieve EPA's goal. Rather the NESCAUM states believe that this effort will only yield more inaccurate data rather than better information.

In order to make meaningful information available to the public, EPA would be better served by having states report a data set that is accurate and truly represents the real work of the delegated enforcement programs. The NESCAUM states therefore recommend that EPA switch from reporting FRV's in the air program to reporting federally reportable actions. This memo from NESCAUM's Enforcement Committee highlights its concerns with EPA's approach, offers some solutions, and requests a meeting to further discuss these issues.

### The Issues

#### *1. States and federal legal citation processes do not match*

In order to create a crosswalk between state and federal air enforcement reporting programs, EPA would need to develop individualized "citation converters" for each reporting agency. This approach fails to recognize that states' legal citations for their air programs do not match federal citations because they were incorporated into their State Implementation Plans (SIPs) as state-specific regulations.

In other reporting programs, most notably the Resource Conservation and Recovery Act Information (RCRAInfo) database, states can easily provide EPA with FRV data by identifying the associated federal regulation with each enforcement document, flag the individual citations related to the violations alleged in the issued document, and report this to EPA via the media-specific data system. This program works because most state RCRA regulations are in a

common format, with little state-specific variation. The reporting is therefore a simple crosswalk between state and federal regulatory citations.

By contrast, due to the unique nature of the air program, there is no overarching unified program, and state regulations do not directly correlate to the federal program. State and local air programs are developed to address attainment and non-attainment issues within the framework of the Clean Air Act, but each governing entity has a degree of latitude to tailor emission control programs to local conditions and state-specific priorities. Because there is no federal “master regulation” to which states can index their regulations, EPA would need to develop individualized “citation converters” for every reporting agency. In the NESCAUM region, a formal enforcement action typically includes from 3 to 20 citations. To populate a regulatory citation library to which violations would be indexed would be an overwhelming undertaking for states. It would require listing the individual citations of every state, local and federal air regulation. It would also require updating, because SIPs change when states revise programs to attain and maintain new national air quality standards.

## ***2. Requires states to redesign their reporting systems***

Under EPA’s current plans, its reporting system would necessitate a complete redesign of state reporting systems in order to allow for federal violation reporting and linking. This would be a very expensive task. Many states maintain only a single system for tracking and reporting actions, and would not be able to separate federal or SIP actions from state-only actions without redesigning their systems. State systems would also need to be redesigned to track additional data.

Moreover, tracking issues would occur when enforcement actions and penalties are handled by state programs other than those that report air compliance and enforcement data to EPA. In states, air enforcement actions often occur in different divisions, and sometimes in different agencies. In addition, state data systems are frequently not under the direct control of the air agency. Any required system modifications may need higher level policy support in addition to funding support.

## ***3. Places undue burden on states***

The NESCAUM states are very concerned that EPA’s move to reporting all FRVs will create an undue burden on the reporting agencies, focus already scarce state resources on data quantity rather than quality, and continue the reporting problems that air programs already face with the current AFS.

## **Suggested Remedies**

The NESCAUM states have tried to identify solutions that focus on the key question, “What does the public want to know or need to know to understand the performance of a facility?” The approach used in the RCRA program provides metrics that count the number of activities but provides no real substantive information on the violations found. We believe that the public is

interested in seeing the facts of a case in addition to the violations or at a minimum key aspects of the case.

### ***1. Full document approach***

The full document approach would provide the actual enforcement document through a web portal. This pathway would provide the greatest transparency to EPA and the public, and would have the added benefit of allowing outside parties to link the actual enforcement documents to the performed action in the AFS. This approach would require states to provide an electronic copy of the enforcement document (in PDF format) to a point-of-contact at EPA, and would require EPA to set up the links between EPA's Online Tracking Information System/Environmental and Compliance History Online (OTIS/ECHO) systems and the pdf document. The key disadvantage to this approach is that the information from the enforcement document would require moderately sophisticated data mining software and it would take some effort to read the documents and cull out key metrics to respond to questions or requests from the Office of Management and Budget, the Inspector General, or Congress. Having the full document available, however, would be helpful for agencies looking for similar enforcement actions to ones they are undertaking. Enforcement documents could be retrieved through an internet application similar to the one employed by EPA's Applicability Determination Index.

### ***2. Core violation data approach***

An alternative to the RCRAinfo method of reporting FRV or the proposed method of document linking is an approach that tracks a common set of core violation types for a set of specified facilities that are subject to listed federal programs. This more user friendly approach takes out the need to link to regulatory citations and replaces it with plain English metrics that, regardless of the regulatory citation, can be tracked if AFS is designed to accommodate a simple code scheme.

Under this approach, we envision three parameters that need to be defined to identify the bounds of the FRV reporting system: (1) the source activities, (2) the programs, and (3) the violations. Below are our recommended criteria for each.

#### ***1. Which universe of sources should be subject to FRV reporting?***

- Any major source or SM80<sup>1</sup> facility where there is a violation of a federal program or federally enforceable program (SIP).
- Minor source reporting should be an option to be decided by a state if it chooses to report minor source data into AFS, and not subject to the FRV reporting system. Some states might include minor sources to simplify batch upload, but others should not be compelled to do such reporting.

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<sup>1</sup> SM80 is a synthetic minor facility whose actual emissions are greater than 80% of major source status. The purpose of this delineation is to segment facilities whose emission levels are approaching those of a major source.

2. *What programs should be reported?*

Violations of federal or federally enforceable programs including:

- A PSD/NSR permit;
- A conditions of an NSPS subpart;
- A condition of a NESHAP subpart;
- A condition of a MACT subpart;
- A condition of a SIP.

3. *What and how should violations be reported?*

NESCAUM suggests that violations be divided into five core violation types:

- Excess emissions violation;
- Failure to keep records or report as required by permit or regulation;
- Failure to test or conduct monitoring as required by permit or regulation;
- Failure to construct or operate facility/equipment in accordance with permit or regulation;
- Failure to obtain or maintain a current permit.

Understanding that there may be a single violation type with multiple program applicability, the system would need to be able to accept a one-to-many relationship. For example, if we had a company with air program codes (APCs) for SIP (0) and NSPS (8) that had a performed enforcement action loaded into AFS, then the action would have an associated matrix listing the five violation types and the air program codes. The state could either enter by hand an X in the appropriate boxes or configure the user interface to map the state data system equivalent over to this field in the AFS. The matrix for this example would look like:

<i>Violation Type</i>	<i>APC = 0</i>	<i>APC = 8</i>
<i>Excess emissions</i>	X	
<i>Failure to keep records/ report</i>		
<i>Failure to test or conduct valid monitoring</i>		X
<i>Failure to construct or operate facility</i>		
<i>Failure to obtain permit</i>		
<i>Other: Must describe in comment</i>		

*Comment:*

This approach is an alternative to our preferred approach to provide actual enforcement documents and linking performed actions to the documents, and does not provide detailed information to the public about any particular case. It does, however, provide information that

could be useful for mining enforcement data from which broad statements could be deduced about the types of violations found through state enforcement programs.

### ***3. Hybrid approach***

Yet another alternative combines the two solutions proposed above. This approach sends the full text document to EPA. As part of the document submission, the reporting agency would generate HTML tags that incorporate the major data elements listed in the approach above. The benefit of this option is that it provides all the relevant data to EPA and the public, and allows for data mining. The significant drawback of this system is that it would be resource intensive to develop and implement. This is the least preferred approach of the NESCAUM Enforcement Committee. It would, however, still require fewer resources than the full FRV approach. In order to put forward such a system, EPA would need to provide resources and guidelines to the states to ensure data quality.

### **Conclusion**

EPA's current approach for reporting violations will require creating an expensive and elaborate state-specific crosswalk to every state regulatory citation that may be federally enforceable. A more simplified system than EPA is currently considering would provide EPA the desired descriptive information and public transparency while not placing an undue burden on the states. Key to implementing any of these strategies is ensuring that reporting agencies have resources and clear guidance from EPA to implement a common national system.

A reporting scheme that is too complex will lead to inaccurate data and confusion, which in turn reduces the value and credibility of the information. An example is EPA's current system for reporting HPVs, where the matrix is too complicated to easily identify violation types. The difficulty in recording and linking HPV actions within the AFS results in an excessive amount of time spent compared to recording other types of data. As a remedy, OECA's Air Enforcement Division is leading a workgroup to improve the entire HPV process. Much like HPV's, if the FRV reporting system is complicated or requires significant data manipulation by multiple users, the quality and consistency of the information will suffer. NESCAUM's preferred solution would accommodate the needs of EPA and the public while not imposing an undue burden on states.

As EPA moves forward to modernize reporting of air enforcement data, it is important to ensure that this new system will yield accurate information to EPA and the public. We would be happy to discuss our concerns and proposed approaches with you at your convenience. If you have any questions, please contact Lisa Rector of NESCAUM at 802-899-5306.

May 8, 2012

Ms. Lisa Lund, Director, Office of Compliance  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Ariel Rios Building, *Mail Code: 2221A*  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Ms. Lund:

On behalf of the Northeast States for Coordinated Air Use Management (NESCAUM), we would like to express our concerns regarding Round 3 of the State Review Framework (SRF). The intent of the SRF process was to develop a standardized method for EPA to conduct reviews of states' compliance and enforcement programs. While the NESCAUM states support the need for EPA to provide oversight of state programs, the states are deeply concerned about the annual Data Metrics Analysis (DMA) process and the validity of some of the specific metrics to be used to evaluate state programs for both the DMA and the SRF. This is not a new concern. Many of these items of concern outlined below have been identified and detailed in a letter sent to EPA by NESCAUM on February 16, 2011 (attached). We are disappointed that EPA has failed to address these issues. Now the states have been asked to provide input into the SRF Round 3 metrics and process on a compressed schedule. The methods for gathering input from states merely appear to be a "check the box" exercise rather than a meaningful attempt to foster dialogue.<sup>1</sup> All of this aside, what follows here outlines our major concerns about the SRF Round 3 process.

The underlying premise of SRF Round 3 appears to be EPA's belief that it can gauge a program's performance by reviewing certain data metrics via an annual data metrics analysis (DMA). While the data verification process has been in place for a couple of years, the states never had an opportunity to review or provide feedback on this process. Now, EPA proposes to rest its review of a state's compliance and enforcement program on a confusing and misleading data analysis, instead of conducting a substantive and meaningful review of the adequacy of a state's inspection program and the appropriateness of its enforcement response. The NESCAUM states disagree with this approach, and object to EPA's attempt to characterize a program's performance by what amounts to a bean counting exercise devoid of substantive content.

Based on our review of the metrics provided for use in the Round 3 SRF documents, the proposed metrics will not provide an accurate representation of a state's compliance and enforcement program. For example, the DMA 8a8 creates a metric that analyzes the High

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<sup>1</sup> For example, EPA's agenda for its May 7 call with the states had one hour for general issues and only 30 minutes to discuss media specific issues for all the media programs. EPA has failed to hold media specific calls to determine if metrics match activities.

Priority Violation (HPV) discovery rate per major facility universe. While states are and should be required to report HPVs to the federal system, it is hard to see how this metric is an indicator of how well a state compliance and enforcement program is functioning. Additionally, the size of the state and the diversity and size of its regulated universe can also have an impact on the metrics. Building on the example above, a state with a small number of major sources may have no or only a few HPVs identified during any given fiscal year. Using such empty metrics in the annual DMA may create the impression that a low percentage of HPVs identified as compared to a national average or goal represents a significant problem within an overall program when it is in fact not the case. The problem is further compounded by the use of this information in data dashboards that compare state programs in entirely inappropriate ways. States differ in enforcement and penalty authorities, initiatives, facility universes, and underlying directives that do not fit into EPA's metric schema.

With regard to the DMA/SRF metrics, some rely on data that are and have been identified as inaccurate for many years. For example, the "compliance status" element has been flawed since its inception. This issue has been well documented and has been discussed at length in the context of Air Facility Subsystem Modernization.<sup>2</sup> Much like the "compliance status" information, the violation information will also likely be flawed due to issues related to Federally Reportable Violations and compatibility with State Implementation Plans.<sup>3</sup> Similarly, the High Priority Violator Policy schema for reporting resolving actions is often at odds with state processes and is difficult to accurately characterize. EPA is currently reviewing the HPV policy and work in this area will make a number of metrics in the Round 3 SRF outdated. The NESCAUM states question why EPA would continue to require the use of information that has already been identified as inaccurate, misleading, and of little value.

EPA has also asserted that SRF Round 3 represents a streamlining of the process. Our review of the documents provided indicates that this is not the case. As outlined, SRF Round 3 represents a process that is far more expansive than the previous SRF reviews and places a significantly larger burden on state air pollution control agencies. The DMA equates to doing a data-only SRF review for every state each year rather than one in four years. Equally problematic are the numerous air compliance and enforcement metrics that expand beyond the existing minimum data requirements (MDRs) and do not match the requirements of the negotiated Compliance Monitoring Strategy (CMS) agreements between the EPA regions and states. This is an expansion of data reporting and scope of analysis well beyond what EPA previously required that clearly does not streamline the existing process.

The SRF Round 3 data review is duplicative with a current, ongoing process of annual review of the states by EPA to measure fulfillment of CMS goals, which also requires an extensive data review. Currently, every state's compliance and enforcement program undergoes review by its EPA regional office as part of EPA's ongoing oversight activity. These activities typically

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<sup>2</sup> We discussed this item in detail in our February 16, 2011 letter to EPA.

<sup>3</sup> We discussed this issue in our February 16, 2011 letter to EPA and again in a memo sent to Lisa Lund on May 3, 2012.

include monthly discussions of HPVs, quarterly or semiannual grant meetings, compliance monitoring strategy reviews and discussions, and annual data verification. The existing processes are performed along well understood lines of oversight responsibility, i.e., from the national program managers down to the regional program and data managers and to the state program and data managers. The dialogue regarding issues that currently occur in these existing processes are sufficient for the interim, non-SRF review years. In this time of dwindling resources, it is unrealistic to add another duplicative data verification component through the SRF Round 3 without assessing the impact it will have on state resources.

We understand and support EPA's need to provide adequate oversight of state compliance and enforcement programs and to ensure that the minimum reportable data are accurate and readily available to the public. We object, however, to using data to drive enforcement and compliance policies, rather than programmatic activities driving the data reporting. The SRF Round 3 effort fails to address this need in a mutually constructive and respectful manner with the states. In this time of shrinking resources, EPA should not be looking to place additional and duplicative reporting burdens on states that will redirect resources from core program activities.

The NESCAUM states are ready and willing to support a streamlined process utilizing data that are already being reported and are reflective of actual program activity. We urge EPA to work with state media program staff to develop a significantly revised SRF Round 3 process that will result in a more substantive and thoughtful assessment process than the one currently put forward. We ask EPA to engage in a meaningful dialogue with state media program contacts to implement data review requirements that are acceptable to all and that enhance—rather than impede—compliance and enforcement activities aimed at achieving cleaner air and improved public health nationwide. If you have any questions regarding our comments, please feel free to contact Lisa Rector of NESCAUM at 802-899-5306.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur Marin".

Arthur Marin, Executive Director  
NESCAUM

Attachment: NESCAUM letter to EPA, February 16, 2011

February 16, 2011

Ms. Cynthia Giles, Assistant Administrator  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Ariel Rios Building, *Mail Code: 2201A*  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: Air Facility Subsystem (AFS) Redesign**

Dear Ms. Giles:

On behalf of the Northeast States for Coordinated Air Use Management (NESCAUM),<sup>1</sup> we would like to express our support for the U.S. Environmental Protection Agency's (EPA's) long overdue effort to revise the Air Facility Subsystem (AFS) in a manner that provides accurate and timely data reflecting environmental compliance and enforcement actions in the states. While we share EPA's goals in this endeavor and have worked closely with the Agency in the past to develop a needs analysis for a modernized AFS, we have some serious concerns regarding EPA's current overall direction for modernizing the AFS.

During a November 2010 meeting of the NESCAUM Enforcement Committee and on subsequent calls, Betsy Metcalf of EPA's Office of Enforcement and Compliance Assurance presented a set of proposed revisions to the AFS. The NESCAUM states greatly appreciated the opportunity to learn about the proposed changes and provide feedback. However, based on EPA's presentation, we have significant concerns that: (1) the information EPA would require states to report is neither manageable, nor feasible; (2) as a result of such impractical requirements, the resulting data would neither provide the public a clear understanding of the status of state and federal environmental compliance and enforcement (C & E) programs, nor a practical sense of the C & E issues at facilities; and (3) data reporting will drive the compliance and enforcement policies, rather than programmatic activities driving the data reporting.

While your office has reached out to some state data management staff prior to developing the current proposal, it is critical that you also consult with staff with appropriate programmatic and legal expertise in state air C & E programs. Engaging with these experts would help to ensure that any system EPA proposes would work within the structure of state air programs. As currently written, the proposed AFS modernization plan does not accomplish this goal. The proposed system appears to follow a structure that is compatible with RCRA and water programs, but is incompatible with air programs, especially where state regulations are made federally enforceable through State Implementation Plans (SIPs).

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<sup>1</sup> NESCAUM is the regional association of state air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Moreover, the NESCAUM states believe the proposed changes would require significant modifications to the types and amount of data that many states currently collect. For example, states that maintain their own data tracking systems would need significant additional resources to revise those systems to track proposed new elements. Such revisions and new tracking requirements would further deplete already dwindling resources for C & E efforts, and may have the effect of reducing or even eliminating state quality assurance or quality control efforts. Lastly, we believe that the increased reporting burden on the states would require EPA to publish a new Information Collection Request in accordance with the Paperwork Reduction Act (44 U.S.C. §§ 3501 et seq.).

Attachment A provides a more detailed discussion of additional issues and recommendations regarding EPA's proposed changes to the AFS. We urge EPA to consider these comments and work with state air program staff in developing a revised system that will provide accurate and timely data that reflect the reality of compliance and enforcement actions. This system is a critical part of the state-federal partnership that allows us to achieve our shared public health and environmental goals under the Clean Air Act.

NESCAUM staff and state members of NESCAUM's Enforcement Committee stand ready to work with you to foster a constructive dialogue. Lisa Rector at NESCAUM will contact your office in the hopes of arranging a meeting with to further discuss our concerns and chart a path forward for achieving our mutual interests. Ms. Rector may be reached at 802-899-5306 or [lrector@nescaum.org](mailto:lrector@nescaum.org).

Sincerely,



Arthur Marin, NESCAUM  
Executive Director



Robert Scott, Air Director NH DES  
NESCAUM Enforcement Committee Liaison

Attachment

cc: NESCAUM Directors  
Bill Becker, NACAA  
Jim Blizzard, ECOS  
Beth Graves, ECOS  
Ken Eng, EPA/Region 2  
Lisa Lund, US EPA  
Adam Kushner, US EPA  
Karl Mangels, EPA/Region 2  
Steven Rapp, EPA/Region 1  
Christine Sansevero, EPA/Region 1

## ATTACHMENT A

### Concerns and Recommendations Regarding EPA's Proposed Changes to the Air Facility Subsystem

1. Compliance Status: EPA has indicated that they will be moving away from compliance status reporting in a modernized system. The NESCAUM states support this decision and commend EPA for listening to the requests of the system users on this issue. Currently, EPA requires state and local agencies to report on the "compliance status" of facilities in their jurisdictions. This requirement means that state and local agencies manually update their data systems to indicate whether facilities are "in compliance" or "in violation." This approach, however, assumes that we can know (and can tell the public) whether a facility is in compliance or in violation at all given points in time. Unfortunately, this is neither realistic nor practical, given that compliance status is constantly changing. Moreover, there are far too many facilities and too many regulations for agencies to maintain data on real-time compliance on an hourly, daily, weekly, or even monthly basis. As a result, compliance status data, as reported in AFS are currently inaccurate and often misleading.

Based on information supplied to the NESCAUM states, it appears that EPA is moving away from compliance status tracking to federally reportable violations (FRV) tracking as a replacement. EPA has also indicated that compliance status may in the future, be based on electronic reporting from the facilities, rather than on a state's determination that a condition of noncompliance exists. Implementation of this change must be considered carefully in light of some legal and technical issues.

States have significant concerns that EPA will automate updating the violation status based on a facility's submittal of electronic documents or other data submissions. While states fully support electronic submission of and easier public access to documents, EPA's AFS must not determine if a violation has occurred. Only the agency providing the legal and technical review of the reported data can make that determination.

Moreover, automatic flagging of a violation in AFS would create legal issues in many states. Some states have significant legal processes they must follow before an item can be called a violation. For example, in Massachusetts, a "violation" label cannot be used until a four-step process of review has been completed and notice to the facility in question has been provided. However, the AFS would require the state to use an action code in AFS to indicate that they have found a violation prior to the completion of this process. Data managers in these states could be held inappropriately liable in cases where an automatic flagging of "in violation" based on excess emission reports or stack test results occur. Massachusetts is not unique in this regard, and similar legal requirements exist in many of the NESCAUM states.

The NESCAUM states recommend that EPA move away from tracking compliance status ("in compliance" or "in violation"). Rather than creating automatic flagging of violations, NESCAUM recommends that EPA track specific inspection and enforcement activities, such

as Full Compliance Evaluations, Partial Compliance Evaluations, Notices of Non-Compliance or Violations, Administrative Orders, and Administrative Penalty Orders. The issuance of an enforcement document is a more appropriate point in the process to change a facility compliance status to “in violation.” Many of these actions are already reported into EPA’s data systems. This information is public, and communicates to the public that EPA and the states are in the field, conducting inspections, and taking enforcement action as necessary.

Eliminating the compliance status reporting would not result in any “relaxing” of reporting requirements. In fact, the NESCAUM states anticipate that by doing so, and moving towards more accurate activities tracking, would enhance the reporting system by focusing on reporting quality compliance monitoring and enforcement data. This would not create an additional reporting burden and would be a more accurate and transparent approach.

Importantly, before moving forward with any revisions to reporting requirements, OECA staff must consult with federal and state legal staff (i.e., Department of Justice and Attorneys General) to ensure that this reporting does not conflict with any legal requirements or circumstances.

2. Violation Reporting and Action Linking: EPA presentations to the NESCAUM states have indicated that compliance and enforcement programs should be required to report *all* state or federal violations and link those violations to the action that determined the violation. Such an approach does not reflect the reality that all state violations may not be actionable on a federal level.

Many states’ legal citations do not match federal citations because they were incorporated into their State Implementation Plans (SIPs) as state regulations. In order to automate this type of reporting, EPA would need to develop individualized “citation converters” for every reporting agency. In our region, citations in a formal enforcement action typically include three to twenty citations. One option would be to have EPA map the regulations for each state into the system. This would make it easier on the states, but would be a significant burden to EPA in initial set up and on-going maintenance. The other option would be to have the states map or flag to the EPA citations, which, because there is no one-to-one relationship between state and federal regulations, would be nearly unworkable.

When it comes to linking the violations to an action, the workload concern is again an issue. With the current AFS system, many states do not have the capacity to link the actions of High Priority Violator (HPV) data. As a result, EPA regions have undertaken this effort. Expanding the linking of data to many more actions would require significant conversions within existing state systems and would require additional staff resources for states that do not maintain their own systems. A survey of the NESCAUM states indicated that they do not have the resources to perform this task, even if EPA were to automate many of the functions.

Another issue of concern is that under the current thinking, EPA's system would require a complete redesign of state systems to allow violation reporting and linking, which would be a very expensive task. Many states maintain only a single system for tracking and reporting actions, and would not be able to separate federal or SIP actions from state-only actions without redesign of their state systems and tracking of additional data in those systems. In addition, tracking issues would occur when enforcement actions and penalties are handled by programs separate than those that report compliance data. In states, enforcement actions often occur in different divisions, and sometimes in different agencies. Further, state data systems are frequently not under the direct control of the air division so modification of the system would need significant support both funding and political.

In sum, violation reporting and action linking would place a burden on states that is simply untenable, even in a modernized and automated system. The NESCAUM states believe that, if EPA continues down this path, the modernized AFS would suffer the same fate as HPV reporting, and provide inaccurate data to the public.

3. Reporting Duration of Violation. EPA has expressed interest in capturing the duration of violations through the modernized AFS. Duration of a violation is a difficult metric to capture and may not be possible because of a number of legal and technical factors. At best, determining duration of a violation would be an estimate. At worst, it can open states and EPA to litigation.

It may be important to determine which measure of "duration" is best to capture. EPA's HPV reporting requirements allow for agencies to capture duration from the initiating action to the final payment of penalty or implementation of a SEP. This is not useful information from an environmental perspective since it does not address the time period over which there were excess emissions to the air. This simple approach highlights the problem with measuring the duration of a violation; it is not possible to know the duration of every single violation from an environmental standpoint, just as it is not possible to know if a facility is in compliance or in violation at every point in time.

If EPA were to require states to report all violations as well as link their duration, the result will be an incomplete, inconsistent, and unusable data set (i.e., the same issues currently found with HPV and compliance status tracking). A likely consequence would be that these incomplete and inaccurate data would be used to measure environmental harm thus compounding the errors and provide misleading information to the public and Congress. NESCAUM recommends that EPA reconsider and withdraw this proposed requirement.

4. Electronic Data Submittal: Electronic submittal of compliance information has the potential to reduce the burden of data entry in the long-run but must be developed in a holistic manner. EPA must take a systems approach in converting to electronic submittals. This type of a change can be dramatic for a state compliance program and will require changes to the actual process of conducting compliance monitoring beyond the impact on data reporting. EPA

needs to proceed in partnership with the state program staffs that are actually collecting and reviewing information in order for this to be successful. Many states have experience in undertaking electronic data collection and submittal and can provide valuable insight to EPA.

### ***Conclusion***

While we urge EPA to continue moving forward with modernizing AFS, it is critical that the system match the programmatic structure of the state and federal air programs. EPA's current system has forced the states to report data in a certain manner for years, which has resulted in a less than efficient and not very useful system. Across the board and in large part because it is a moving target, compliance status data are at best incomplete, but more commonly inaccurate. As a result, states and EPA are likely providing inaccurate and potentially misleading information to the public and Congress. The U.S. Department of Justice has expressed concerns about compliance status data in litigation. At trial, violators have capitalized on the inaccuracies of the data by printing out years of "in compliance" records, compromising even strong enforcement cases. NESCAUM is deeply troubled that the proposed system, as presented to NESCAUM, continues many of the shortcomings of the current system. It is imperative that EPA work with state program staff when developing this system to ensure that it provides accurate and timely data that reflect the reality of compliance and enforcement program actions.